

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
Telephone Number Portability ) CC Docket No. 95-116  
RM 8535

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To: The Commission

COMMENTS OF AIRTOUCH PAGING, CAL-AUTOFONE AND  
RADIO ELECTRONIC PRODUCTS CORP. ON FURTHER  
NOTICE OF PROPOSED RULEMAKING

AirTouch Paging and its affiliates<sup>1/</sup> ("AirTouch"), Cal-Autofone, and Radio Electronic Products Corp. ("REPCO") (collectively referred to as the "Companies"), by their attorneys and pursuant to Sections 1.415, 1.419 and 1.421 of the Commission's Rules,<sup>2/</sup> hereby submit their comments on the Further Notice of Proposed Rulemaking<sup>3/</sup> ("FNPRM") released July 2, 1996 in the captioned proceeding. The following is respectfully shown:

**I. Preliminary Statement**

1. The Companies have a substantial basis for informed comment in this proceeding. AirTouch is a provider of nationwide paging services. Cal-Autofone and REPCO provide paging service in local service areas. AirTouch filed Comments and Reply Comments in response to the Notice of Proposed Rulemaking<sup>4/</sup> adopted in the captioned proceeding and Supplemental Comments in

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<sup>1/</sup> The licensed affiliates of AirTouch Paging are: AirTouch Paging of Virginia, Inc., AirTouch Paging of Kentucky, Inc., AirTouch Paging of Texas, Inc., AirTouch Paging of California, Inc., and AirTouch Paging of Ohio.

<sup>2/</sup> 47 C.F.R. §§ 1.415, 1.419, and 1.421.

<sup>3/</sup> FCC 96-286.

<sup>4/</sup> 10 FCC Rcd. 12350 (1995).

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response to the Commission's request for comments on the effect of the Telecommunications Act of 1996 on the proceeding. AirTouch's filings related to the applicability of number portability obligations to paging and message service providers. The Companies' comments on the FNPRM relate to the proposed recovery from paging providers of costs associated with the development of number portability. Representing local, regional and nationwide paging service providers, the Companies' have a substantial interest in the outcome of the FNPRM as well as an ability to provide informed comment on the proposals set forth.

**II. Costs Should be Recovered From Carriers  
Benefitting From Number Portability**

2. The Commission tentatively concluded that there are three types of costs associated with the development and provision of number portability: (1) costs incurred by the industry as a whole, (2) carrier specific costs directly related to providing number portability, and (3) carrier-specific costs not directly related to number portability.<sup>5/</sup> The Commission proposed that the third category of costs be borne by the individual carrier who incurs those costs.<sup>6/</sup> The Companies support this proposal.

3. With respect to the first two categories of costs, however, the Commission seeks comment as to whether those costs should be recovered from all telecommunications carriers (including Commercial Mobile Radio Service Providers ("CMRS")),

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<sup>5/</sup> FNPRM ¶208.

<sup>6/</sup> FNPRM ¶226.

or only from those carriers who have had numbers ported and are using the databases to route ported numbers.<sup>2/</sup> The Commission requested comment as to whether it may exclude certain carriers from the definition of "Telecommunications Carriers" for the purposes of Section 251(e) of the Telecommunications Act of 1996 (the "1996 Act"). In response to the Commission's proposals, the Companies respectfully submit that the costs associated with the implementation and provision of number portability should be borne by the carriers who benefit from the provision of number portability.

4. With respect to the second category of costs described above, those which are carrier-specific and related to the provision of number portability, the Companies believe that such costs should be the responsibility of the carrier who incurs them. The carriers receive the direct benefits of number portability - the ability to lure potential customers from existing service arrangements while maintaining the same telephone number. These "category two" costs are directly related to that benefit. It is contrary to the public interest to require companies not receiving this competitive benefit to finance the costs incurred by other companies eligible to take advantage of the number portability service. Moreover, requiring non-beneficiary companies to finance costs incurred by direct beneficiaries of number portability works as a disincentive to those companies to lower the costs associated with the provision

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<sup>2/</sup> FNPRM ¶¶213, 215, 217, 218, and 221.

and utilization of number portability services. This disincentive is contrary to the trend of Commission policies which are intended to encourage lower cost and priced services.

5. Paging and one-way message service providers are not obligated to provide number portability, nor are they the direct beneficiaries of the provision of number portability.<sup>8/</sup> As indicated in the First Report and Order<sup>9/</sup> released on July 2, 1996 in the captioned proceeding, the benefits of number portability accrue to the public, from increased competition for their local exchange service subscribership, and to broadband CMRS and wireline service providers, due to increased competition between broadband and wireline providers and between broadband providers.<sup>10/</sup> Simply put, unlike a competitive local exchange carrier ("CLEC"), who could increase subscribership by encouraging subscribers away from their current local exchange carriers ("LECs") with a guaranty that they will retain their telephone number, a paging company would not be able to offer the same incentive to subscribers of another carrier. Thus, the number portability policies adopted in the First Report and Order will not enhance a paging company's ability to attract subscribers. Based upon the foregoing, and the Commission's

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8/ See FNPRM ¶156 (specifically excluding paging services from number portability due to their minimal impact on local exchange competition and the substantial costs associated with upgrading networks to accommodate interim or long-term portability solutions).

9/ FCC 96-286.

10/ See FNPRM ¶155.

recognition that imposing on paging companies the substantial costs of implementing number portability would outweigh the potential benefits, the Companies respectfully submit that paging companies should be exempt from cost allocation/recovery mechanisms.

6. The Companies further submit that the exclusion of certain carriers from the cost recovery mechanisms adopted pursuant to Section 251(e) forth 1996 Act is not inconsistent with the 1996 Act and is in the public interest. The purpose of Section 251(e) of the 1996 Act would not be served by the imposition of number portability costs on paging companies. The 1996 Act requires that costs be recovered from all telecommunications carriers on a competitively neutral basis so that no particular class of carrier is forced to bear a disproportionate portion of the burden in implementing services or policies which benefit the public. For example, pursuant to Section 251(e), the Commission requires that the costs associated with numbering administration be borne by all telecommunications carriers based upon gross revenues from the provision of telecommunications services.<sup>11/</sup> In addition, the 1996 Act calls for contributions to the Universal Services Fund by all telecommunications carriers. Even prior to the enactment of the 1996 Act, telecommunications carriers contributed to the Telecommunications Relay Services Fund regardless of their direct

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<sup>11/</sup> See Second Report and Order and Memorandum Opinion and Order adopted in the interconnection proceeding, CC Docket No. 96-98, FCC 96-333.

participation in the program. These broad-based cost recovery mechanism were based upon the principle that (1) all carriers benefit from the maintenance of the policy or program (e.g., in the case of numbering administration), or (2) the public, rather than a particular class of carrier or all carriers, benefits from the provision of these services or the ongoing viability of these programs (e.g., the remainder of the examples provided). In contrast, and as noted above, number portability benefits the public and certain categories of carriers -- wireline and broadband CMRS. Thus, the fundamental principle underlying the implementation of a broad-based cost-recovery mechanism is not present.

7. In addition, excluding paging companies from the cost-recovery mechanism adopted is consistent with the public interest. The paging industry is vigorously competitive. Carriers compete chiefly based upon price and service area -- profit margins are below those of other wireless services. If the Commission imposes what it already has deemed to be significant costs on the paging industry in connection with the development and administration of number portability, the paging industry's ability to provide a low-cost alternative to other wireless services will be adversely and disproportionately affected.

### **III. The Commission Must Clearly Preempt Inconsistent State Rules Regarding Number Portability Cost-Recovery**

8. The Companies request that the Commission clearly reiterate in its final rules that states are preempted from

adopting cost-recovery mechanisms which are inconsistent with those adopted by the FCC in this proceeding. The Commission has found that Section 251 of the 1996 Act "sets forth the standards for the recovery of number portability costs and grants the Commission the express authority to implement this standard."<sup>12/</sup> Further, the Commission concluded that, based upon that authority, it "should adopt guidelines that the states must follow in mandating cost recovery mechanisms for currently available number portability methods."<sup>13/</sup> Even in instances where states have adopted cost-recovery mechanisms, the Commission indicated that those approaches must be consistent with the statutory mandate as set forth by the Commission.<sup>14/</sup> Thus, it is clear that cost-recovery mechanisms which are inconsistent with those adopted by the Commission are not enforceable and must be revised to comply with the Commission's guidelines.

9. The Companies' request for a reiteration of federal primacy in this area is prompted by a recent action taken by the Connecticut Department of Public Utility Control ("CDPUC")<sup>15/</sup> with respect to the recovery of costs associated with the

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<sup>12/</sup> First Report and Order ¶126.

<sup>13/</sup> Id. ¶127.

<sup>14/</sup> Id.

<sup>15/</sup> Application of the Southern New England Telephone Company for Approval to Offer Interconnection Services and Other Related Items Associated with the Company's Local Exchange Access Tariff, Decision, ("CDPUC Decision"), Docket No. 95-11-08 (State of Connecticut Department of Public Utility Control, dated July 17, 1996)

provision of number portability in the State of Connecticut. Although the CDPUC initially decided to recover the costs of number portability solely from LECs and CLECs because only those carriers benefit from the provision of number portability, the CDPUC changed its decision within the text of its order and expressed its opinion that the 1996 Act required the CDPUC to recover the costs from all telecommunications carriers. Relative portions of the text of the CDPUC's Decision are attached as Attachment A. In addition to failing to provide wireless carriers an opportunity to participate in the proceeding and to assist in the accurate determination of the costs associated with number portability,<sup>16/</sup> the CDPUC overstepped its jurisdiction by interpreting a provision of the 1996 Act which the FCC has the obligation and jurisdiction to interpret. Moreover, the CDPUC's conclusion is inconsistent with that proposed by the FCC. First, the CDPUC does not take into consideration that the FCC has requested comment as to whether any carriers should be excluded from the definition of Telecommunications Carrier for purposes of Section 251(e). Second, the CDPUC's cost-recovery method is based upon a carrier's "number of active telephone numbers (or lines) relative to the total number of active telephone numbers

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<sup>16/</sup> The proceeding was initiated with respect to SNET's provision of, among others, interconnection and number portability services to CLECs within Connecticut. Only when the CDPUC's Decision was issued did the CDPUC's proceeding implicate wireless providers. As a response, several wireless providers attempted to intervene in an appeal of the CDPUC's Decision. Those attempts were unsuccessful. See Attachment B - Order denying AirTouch's Petition for Party Status in the proceeding.




(or lines) in SNET's service territory..."<sup>17/</sup> This decision is contrary to the Commission's tentative conclusion that "the use of gross telecommunications revenues to allocate costs best comports with our principles for competitively neutral cost recovery set forth above."<sup>18/</sup> Based upon the foregoing, the Companies respectfully submit that a clear statement that inconsistent state cost-recovery mechanisms are preempted is critical.

#### IV. Conclusion

WHEREFORE, the foregoing premises being duly considered, the Companies respectfully request that the Commission adopt the proposals set forth in these comments.

Respectfully submitted,

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By:   
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August 16, 1996

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<sup>17/</sup> CDPUC Decision, at p. 64.

<sup>18/</sup> FNPRM §213.

**ATTACHMENT A**



# STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL  
10 FRANKLIN SQUARE  
NEW BRITAIN, CT 06051

**DOCKET NO. 95-11-08 APPLICATION OF THE SOUTHERN NEW ENGLAND  
TELEPHONE COMPANY FOR APPROVAL TO OFFER  
INTERCONNECTION SERVICES AND OTHER RELATED  
ITEMS ASSOCIATED WITH THE COMPANY'S LOCAL  
EXCHANGE ACCESS TARIFF**

July 17, 1996

By the following Commissioners:

Jack R. Goldberg  
Thomas M. Benedict  
Reginald J. Smith

**DECISION**

Specifically, the FCC determined that the adopted cost recovery mechanism should be competitively neutral in that it should not offer one service provider "an appreciable, incremental cost advantage over another service provider, when competing for a specific customer." *Id.*, ¶132, pp. 68 and 69. The second criteria adopted by the FCC required that the interim number cost recovery mechanism "not have a disparate effect on the ability of competing service providers to earn normal returns on their investment." According to the FCC, dividing interim number portability costs equally among carriers would violate the second criteria. *Id.*, ¶135, p. 70.

The FCC notes that §251(3)(2) of the 1996 Telcom Act requires that the costs of providing number portability be borne by "all telecommunications carriers." The FCC stated that:

Under this reading, states may require all telecommunications carriers -- including incumbent LECs, new LECs, CMRS providers, and IXC's -- to share the costs incurred in the provision of currently available number portability arrangements. As discussed in greater detail below, states may apportion the incremental costs of currently available measures among relevant carriers by using competitively neutral allocators, such as gross telecommunications revenues, number of lines, or number of active telephone numbers.

*Id.*, ¶ 130, p. 68.

In light of the above, the Department finds its requirement that the costs associated with the provision of interim number portability be recovered only from new market entrants is inconsistent with the FCC's July 2, 1996 Order. Given the 1996 Telcom Act and the FCC's July 2, 1996 Order, SNET should therefore recover its SPLNP costs from all telecommunications carriers (i.e., incumbent LECs, CLECs, CMRS providers, and IXC's). Since all telecommunications carriers will be required to recover SNET's SPLNP costs, the Department believes that a cost recovery mechanism based on a carrier's number of active telephone numbers (or lines) relative to the total number of active telephone numbers (or lines) in SNET's service territory is appropriate and would satisfy the FCC's requirement for competitive neutrality. *Id.*, ¶136, p. 71.

As noted above, the Department has determined that in some cases, SNET has overstated its cost components (i.e., central office function) while providing little or no justification for other costs (i.e., transport costs) it will incur resulting from its provision of SPLNP. The Department attributes these problems to SNET's inexperience in providing SPLNP. Therefore, in order for SNET to gain this experience, and so as to not delay the development of meaningful local competition, SNET should immediately begin offering SPLNP. At such time as SNET is confident that it possesses the necessary information that accurately reflects its current and expected SPLNP cost experience, SNET should submit to the Department for review and approval, a proposed SPLNP cost recovery mechanism that satisfies the FCC's criteria outlined in

**ATTACHMENT B**

## CERTIFICATE OF SERVICE

I, Myra F. Burke, a secretary in the law firm of Paul, Hastings, Janofsky & Walker, hereby certify that a copy of the foregoing Comments of AirTouch Paging, Cal-Autofone and Radio Electronic Products Corp. on Further Notice of Proposed Rulemaking was sent by first class, postage prepaid, United States mail or hand delivery on August 16, 1996.

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